# REGIONAL PLANNING FOR ENVIRONMENTAL POLLUTION CONTROL

*by Bill Elliott*

Part of what I am about to say will be a reiteration of what has been said many times already, and I think perhaps, too often. By that I mean that the problem of pollution has been laid before the public enough, so that everyone is aware that there is a problem. It is a tradition of the American people that any question of great significance be discussed at long length before action is taken. It is one purpose of this talk today to impress upon you men of action that the time for discussion is past and now a critical analysis of that problem is imperative.

Let us for a moment examine the causes of pollution. All large cities in the United States have air and water pollution problems. It has been said that four-fifths of all air pollution is invisible and much of it odorless. Does it come from industry? Does it come from auto exhausts? Can anyone pinpoint the causes of air pollution? We know that water pollution comes from cities as well as industry associated with those cities. Is this not in fact pollution created as a result of our environment? Each community has a different combination of pollutants. The association of man into large numbers in metropolitan areas causes the distribution of pollutants in the air and water specifically attendant to the activities which make these people congregate. Thus—environmental pollution.

The wheels of our economy, that is, the trucks, buses, planes, and cars of a mobile America, are a necessity. And yet, they produce a threat to our health—air pollution. Production of steel, electrical power, petrochemicals, and all of the innumerable goods and services demanded by our affluent society with all of their blessings—these also give us pollution. Since the founding of the Greek society centuries ago, man has been plagued with the never-ending waste pile. Yet even the destruction of waste products produces pollution.

Not only are we faced with pollution from all the many causes we currently know, but also, we must face the never-ending scientific development of new products and processes which emit new and different pollu-

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Editor's Note: The Honorable Bill Elliott is County Judge, Harris County, Texas.

tants. Recent studies have indicated that the largest pollutant of our air is carbon monoxide. Its effect on man is well known. Yet more is being learned daily that gives us greater fear of this pollutant. The emission of sulphur oxide into the air from factories, electrical power plants, and homes ranks second as a menace to our health. Sulphur oxide in the air affects the oxygen in the blood supply thus bringing about deterioration of the mind, difficulty in breathing, and a rise in heart ailments. These pollutants combined with hydrocarbons cause the yellowish brown haze that surrounds urbanites today, called petrochemical smog by air pollution authorities.

Air pollution would be a great deal less of a problem if air circulated constantly. Mountains, tall buildings, and lack of lateral air currents prevent air from consistently circulating freely thus leaving only vertical movement of polluted air. All too frequently there occurs a temperature inversion, preventing the hot polluted air from rising, leaving man to cope with air pollution at its worst.

Water pollution of course is more difficult to generalize because polluted water may contain human wastes, detergents, used water from homes, acids, chemicals, radioactive substances, mineral salts, insecticides, fertilizers, and herbicides from farms. Any or all of these pollutants may be in your water supply.

So where does the Regional Plan fit into all of this pollution? The basic responsibility of any community is to preserve the health and welfare of man now and in the future. Specific objectives, which may vary from place to place in intensity, include: 1) protection of plant and animal life; 2) insuring continuous economic growth and development; 3) prevention of damage to physical property and interference with its normal enjoyment; 4) provision of visibility required for safe air and ground transportation; and 5) maintenance of an aesthetically acceptable and enjoyable environment. In order to achieve these objectives, a pollution control program must be comprehensive; it must look to future pollution problems as well as those of today. Since air and water's basic use is to sustain life, all other uses must give way to maintaining air and water quality which will not adversely affect man's health and well-being. As we all know, pollution is not limited to the boundaries of any political subdivision. Therefore, a regional approach is the logical choice.

What are the strongest reasons for a regional approach to air and water pollution control? They are: 1) pollutants' disregard for political boundaries; 2) economic benefits of air and water pollution control; and 3) achievement of more effective control. The first reason is patently obvious. One has only to look at a national weather map to see that the movement of air has no regard for political subdivision boundaries, city limit lines. The second reason is not so obvious. Of prime importance is the

fact that the larger the area, the greater the financial resources which are available. An additional aspect of this reason is that there is increased efficiency as a result of eliminating duplication of function and personnel, such as laboratory equipment and testing. Another major economic consideration is that greater federal support can be obtained by multi-jurisdictional programs over single-jurisdictional programs. Multi-jurisdictional air and water pollution control agencies may apply for federal grants which provide up to three-fourths of the cost of new funds to be expended by the pollution control agency. This as compared to two-thirds grants for a single-jurisdictional agency.

The third reason for a regional plan is the potential for effectiveness. There is little value achieved where a community develops a control program if the pollution sources are located elsewhere and are not controlled or are ineffectively controlled. Usually "bedroom communities" are the victims of such circumstances. When they encourage their factory neighbors to control pollution, the response is either fear or indifference. The factory community leaders will complain that a control program will force out industry. At least one researcher has found the contrary to be true. Professor Benjamin Linksy of the University of West Virginia uncovered only two cases in which industry's pull-out could be related to pollution control. Instead, there were many instances where industries refused to locate in a community because of polluted air. A regional control program provides the strength of numbers and independence on the issue.

Two regional approaches which have enforcement authority as well as responsibility for research and inspection and which include all area communities are the Los Angeles County Air Pollution Control District and the Bay Area Air Pollution Control District which is in the San Francisco area. Both are special districts created under different state laws, the minimum size of a district in California being one county.

The Los Angeles County District maintains control jurisdiction over the 4,083 square miles of the 71 cities within the county. Over six million people reside in that county. The five-member county governing board serves as the air pollution control board. It, in turn, appoints an air pollution control officer. Currently, his supporting staff numbers three hundred persons in six divisions: business management, evaluation and planning, public information, enforcement, engineering, and technical services. As these divisions indicate, the Los Angeles program has all the elements of a control agency. Since its establishment in 1947, the Los Angeles program has pioneered in several phases of air pollution control work. The overnight development of the pollution problem and the national infamy of the Los Angeles County smog provided the impetus as the program developed and expanded. Today, the number of stationary sources creating pollution is limited. The prime remaining source is automobile exhaust,

which is a state responsibility in California. It is significant that the financing for the Los Angeles control program comes from the county general fund and the approximation for 1965 totaled almost four million dollars or 60.8¢ per capita.

The Bay Area District, on the other hand, grew out of an unsuccessful voluntary program started in 1949. Several polluters voluntarily made some corrections but most did very little. In 1955, the state legislature established the Bay Area District. Nine counties are provided for in the program but three do not, at their request, now participate. When the county governing board in any of their counties adopts a resolution stating that the county has an air pollution problem, that county will assume an active role in the Bay Area program. Somewhat unique is the board of directors which is composed of 12 members—two from each of the six counties in the region. One member from each county is selected by the county board and must be a county board member. The other member is selected by a group called the City Selection Committee, consisting of the mayors of each city in the county. The director chosen by this City Selection Committee must be a mayor or councilman. In this way, regional representation of the entire area is provided by the elected representation of the cities and counties involved. The Bay Area program includes research activities, a sampling program, a registry of air polluters, enforcement activities, and an information office. The district covers 4,400 square miles and services four million people. Its financing comes from taxes the participating counties levy specifically for air pollution control, the amount to be levied being decided by the District's Board of Directors. Population and assessed valuation are the basis for apportioning costs. The enabling law for the district sets the maximum real estate levy at 1.3¢ per hundred valuation. The present per capita expenditure is 31.8¢.

Few problems facing government so obviously call for a regional solution as does pollution. The increase in the number of multi-jurisdictional programs reflects acceptance of the logic of a regional approach. The key to an effective and thus successful regional program is the interest of all communities in the program. This brings us to the crux of the matter. The responsibility for controlling pollution is first and foremost that of the local elected officials. The problems involved are normally suited to local action; the necessary knowledge and know-how exists; the basic legal authority within the states is firmly established. Two crucial requirements for a successful program are the local elected officials' determination to control pollution and a jurisdictional authority large enough to allow them to do so. In creating a pollution control program, the two questions are: what is the legal basis for controlling pollution, and, what federal and state laws will affect the local program?

It is clear that the original basis for pollution control was the law of

nuisance. More recently, however, statutes have avoided the difficulties of the common law doctrine of nuisance and have simply declared the emission of a pollutant into the air or water a public offense. The validity of these statutes does not depend on whether the act is a nuisance but on whether the law comes within constitutional consideration—that is, certainty, reasonableness, and reasonable classification as in the case for any statute or ordinance. The case of *Northwestern Laundry* vs. *Des Moines* is illustrative of this point. Here the court upheld an ordinance prohibiting the emitting of dense smoke in cities or populous neighborhoods, saying: "So far as the Federal Constitution is concerned, we have no doubt the state may, by itself, or through authorized municipalities, declare the emitting of dense smoke in cities and populous neighborhoods a nuisance and subject to restraint as such; and that the harshness of such legislation, or its effect upon business interest, short of a merely arbitrary enactment, are not valid constitutional objections. Nor is there any valid Federal Constitutional objection in the fact that the regulation may require the discontinuance of the use of property or subject the occupant to large expense in complying with the terms of the law or ordinance."

In a sense, the court has answered the second question as well as the first. But what effect does the state have on air and water pollution? Although local government has primary responsibility for pollution control, there can be no effective solution to the problem without the cooperation of the state. The state must delegate authority to permit local action; it must be capable of exercising control where local governments fail to act; and it must assume the responsibility of controlling some air and water pollution problems not amenable to local action, such as automobile emmission and others inter-jurisdictional in nature. Some see that the answer lies in legislative enactment of statutes which permit local action but impress local responsibility as well. I cannot impress upon you enough the need for local response and local control. Said another way: beware of a pig in a poke or of trojan horses.

Whether the county or multi-jurisdictional county district is the solution, I leave up to you. But what we, as citizens of this community, must do now is to secure legislative authority giving us the right to keep clean our own air and water.